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## Documentation and Emotions: Producing Displaced Legal Subjects

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# Documentation and Emotions: Producing Displaced Legal Subjects

SUSAN M. STERETT\*

## ABSTRACT

*Disasters are globally inflected today in humanitarian assistance, the organizations that support people after disaster and operate globally, and in the mobilization of arguments international human rights arguments. The domestic bureaucratic processes of humanitarian assistance after disaster in the United States do not state these connections; after Hurricane Katrina in the United States, they were most evident in the people and organizations that helped, and in the flow of humanitarian assistance from around the world that paid for assistance. Second, domestic documents for claiming assistance must limit that assistance to people hurt in disaster. That means they assist people who claim to be away from home temporarily and displaced by disaster. Therefore, the documents require that people claim to wish to go home. However, when those who assisted believed return was unlikely, documents also managed expectations about return by asking after practical, material support for returning home, attempting to dampen clients' longing for home. This article relies on interviews and bureaucratic documents used after Katrina to explore global subjectivities for assistance, and the management of emotions.*

## INTRODUCTION: GLOBAL AND DOMESTIC DISASTER ASSISTANCE

Disaster generates humanitarian assistance, both from governments and nongovernmental organizations (NGOs). In the

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United States, governments respond to disasters with assistance for the disaster victims and pensions for those who respond to fires and floods. Scholars rethinking the welfare state have found disaster assistance foundational to national programs in the United States, a shift in focus from long-standing analysis of programs such as social security for the elderly and assistance to poor families.<sup>1</sup> In more recent times, the international apparatus of humanitarianism has colored domestic assistance, even though claiming human rights is not familiar to most within the United States.<sup>2</sup> This Article examines the production of paperwork and emotions in disaster assistance as a way of understanding postneoliberal subjectivities. It does so through analysis of housing assistance programs for persons displaced by Hurricane Katrina since 2005.

Humanitarian assistance in the United States cares for the choosing, planning person who is also a victim. That person is a subject for global concern, as humanitarianism moralizes assistance from governments and nongovernmental organizations (NGOs) around the world.<sup>3</sup> Humanitarian assistance integrates with global governance of climate change in the face of rising sea levels.<sup>4</sup> In December 2015, press coverage of the Paris climate change conference was accompanied by stories of island nations where people would no longer be able to live due to sea-level rise.<sup>5</sup>

Although Katrina was an exceptional event, catastrophes and extreme weather events may be more frequent in the future. Extreme events and sea-level rise in the United States may well require mass migration away from the coasts. The National Climate Assessment identifies “unplanned retreat” from the coasts as a key problem, given expectations of sea-level rise and increasing numbers of extreme

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1. See, e.g., MICHELE LANDIS DAUBER, *THE SYMPATHETIC STATE: DISASTER RELIEF AND THE ORIGINS OF THE AMERICAN WELFARE STATE* (2013); SUSAN M. STERETT, *PUBLIC PENSIONS: GENDER AND CIVIC SERVICE IN THE STATES, 1850–1937*, at 4 (2003); Thomas A. Krainz, *Fleeing the Big Burn: Refugees, Informal Assistance, and Welfare Practices in the Progressive Era*, 24 J. POL’Y HIST. 405 (2012).

2. For the argument that the international humanitarian apparatus is a central part of what brings law to disaster, see generally MARK FATHI MASSOUD, *LAW’S FRAGILE STATE: COLONIAL, AUTHORITARIAN, AND HUMANITARIAN LEGACIES IN SUDAN* (2013).

3. See DIDIER FASSIN, *HUMANITARIAN REASON: A MORAL HISTORY OF THE PRESENT* 1–2 (Rachel Gomme trans., Univ. of Cal. Press 2012) (2010).

4. See Coral Davenport, *Pacific Island Nation Struggles in the Path of a Relentless Sea*, N.Y. TIMES, Dec. 2, 2015, at A1.

5. See *Paris Climate Change Conference - November 2015*, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (2015), [http://unfccc.int/meetings/paris\\_nov\\_2015/meeting/8926.php](http://unfccc.int/meetings/paris_nov_2015/meeting/8926.php) (last visited March 10, 2016).

weather events.<sup>6</sup> In the United States, there is no general framework for relocation, though the Department of Housing and Urban Development (HUD) recognizes that extreme events and rising sea levels will mean displacement of already disadvantaged people.<sup>7</sup> Displaced people are the legal subjects in the human rights framework for people who flee extreme events, but migration due to climate change will require more than temporary shelter on an emergency basis. Alternatively, the neoliberal legal subject may be called on to manage her own disaster relief.

In Part I, I situate disaster assistance in the United States in its global context. In Part II, the Article discusses the production of legal subjectivities through bureaucratic paperwork; this paperwork mobilizes and brackets off emotional subjectivities. Part III then discusses the sociolegal study of the production of emotions, linking it to the narratives that law recognizes. In the United States, emotional narratives of displacement include a readiness to move for opportunity or mobility, contrasting with another American characteristic, homesickness. Parts IV and V explain how those two tropes—mobility and homesickness—organize the analysis of homelessness after Katrina in accessing assistance. The Article intertwines the emotional states of legal subjects and the paperwork that rationalizes, simplifies, avoids, or produces those emotions. The Article draws on forms used to determine eligibility for government assistance after Katrina.<sup>8</sup> It also draws on interviews with displaced homeowners from the Gulf Coast. In these interviews, I asked subjects about their understanding of home and return. Contrasting those interpretations with the paperwork used to claim assistance, and with caseworkers' guidance on how to fill out that paperwork, illuminates how the Federal Emergency Management Agency (FEMA) understood displacement. The Article argues that expecting return is not independent of law; legal work after disaster for displaced people asks that people claim an intent to return home to continue assistance.

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6. Susanne C. Moser et al., *Coastal Zone Development and Ecosystems*, in CLIMATE CHANGE IMPACTS IN THE UNITED STATES: THE THIRD NATIONAL CLIMATE ASSESSMENT 579, 591 (J. M. Melillo et al. eds., 2014). The National Climate Assessment is the United States' leading reporting community on climate change and what it means for the United States. It incorporates information from citizen comments, expert assessments, a Federal Advisory Committee, and a panel of the National Academy of Sciences. See *National Climate Assessment*, U.S. GLOBAL CHANGE RESEARCH PROGRAM, <http://nca2014.globalchange.gov>

7. See U.S. DEP'T OF HOUS. & URBAN DEV., HOUSING AND URBAN DEVELOPMENT CLIMATE CHANGE ADAPTATION PLAN 3 (Oct. 2014).

8. These administrative forms, filled out by displaced individuals seeking government assistance, were collected during my own fieldwork.

## I. GLOBALIZATION, DISPLACEMENT, AND ASSISTANCE

Neoliberalism's hallmark is its reliance on the market and individual responsibility. Individual disaster relief partly suspends a commitment to individual responsibility by treating people as subjects in desperate need who merit help. Disaster relief programs claim to enact respect for humanitarian needs. However, individual disaster assistance is to help people through a time-limited disaster, and everyone who helps sees creating the self-sufficient liberal legal subject who is individually responsible for choosing where and how to live as crucial to providing determinable assistance. This tension is evident in bureaucratic forms structuring the distribution of assistance. This Article therefore argues that state processes guide choices and produce subjectivities through the forms that are the hallmark of disaster governance.

States mediate globalization by producing the global through domestic political processes, as Carol Greenhouse has argued.<sup>9</sup> Yet, Greenhouse continues, we have not traced domestic processes and the production of the global in domestic political subjectivities.<sup>10</sup> In disaster assistance, domestic bureaucratic processes tacitly inscribe the global legal subject of humanitarian assistance. Below I describe three ways that global governance provides a backdrop to domestic assistance, both by its presence and by its absence. First, at the time of Katrina, public commentary framed a reference to international status as offensive. International guidelines for displaced people largely went unmentioned, though a local organization did mobilize the guidelines to frame its critique of the government. Second, the United States government sometimes uses disasters in other countries to extend temporary legal status to those countries' nationals already living in the United States. Finally, disasters attract international donations for domestic use. In the United States, Katrina brought \$66 million in international donations.

Commentators first called displaced people "refugees," linking those who were displaced with international refugees.<sup>11</sup> To displaced Americans, however, refugee status implied abject status, not the

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9. See Carol J. Greenhouse, *Introduction*, in *ETHNOGRAPHIES OF NEOLIBERALISM* 1 (Carol J. Greenhouse ed., 2010);

see also SALLY ENGLE MERRY, *Introduction: Culture and Transnationalism*, in *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* 1 (2006).

10. *Id.*

11. See, e.g., Lynn Weber & Lori Peek, *Documenting Diaspora: An Introduction*, in *LIFE IN THE KATRINA DIASPORA* (Lynn Weber & Lori Peek eds., 2012); Dana Hull, *What's in a Name?*, *AMERICAN JOURNALISM REVIEW*, <http://ajrarchive.org/Article.asp?id=3963>.

international rights so unfamiliar in the United States.<sup>12</sup> “Refugee” implied that they were claiming assistance beyond their ordinary rights of national belonging.<sup>13</sup> National belonging and citizenship meant more to displaced people than international human rights. The more appropriate guidelines are the United Nations Guiding Principles on Internal Displacement.<sup>14</sup> People who are “internally displaced” have not crossed national boundaries, though they have had to leave home, because of war or other disaster. Issued in 1998, the Guiding Principles provide for an amalgam of basic civil rights and liberties for internally displaced persons, such as freedom of thought, a right to vote, a right against discrimination, and a right to protection in war and disaster.<sup>15</sup> States are urged to protect those within their borders from displacement, unless displacement is required for the safety and health of those displaced; to gain the informed consent of the displaced; and to provide a right to judicial review of displacement decisions.<sup>16</sup> The Guiding Principles recommend that people be given the right to choose where they will reside temporarily.<sup>17</sup> (Displacement is not permanent, unlike migration.)<sup>18</sup>

Few in the United States invoked the Guiding Principles at the time of Katrina, even to mobilize political claims. Applying international guidelines to internal events in the United States plays better at the level of professional elites than in the affected communities themselves. Advocacy groups brought up the Guiding Principles, and the project on Internal Displaced People at the Brookings Institution addressed them in a panel on natural disasters and displacement in January 2008.<sup>19</sup>

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12. On resistance to human rights claims and the United States, see, for example, Sally Engle Merry & Jessica Shimmin, *The Curious Resistance to Seeing Domestic Violence as a Human Rights Violation in the United States*, in HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM 113 (Shareen Hertel & Kathryn Libal eds., 2011).

13. See, e.g., Susan M. Sterett, *Need and Citizenship After Disaster*, 13 NAT'L HAZARDS REV. 233 (2012); WHEN THE LEVEES BROKE: A REQUIEM IN FOUR ACTS (HBO Documentary Films & 40 Acres and a Mule Filmworks 2006).

14. See U.N. Rep. of the Secretary-General, *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2 (1998) (by Francis M. Deng).

15. *Id.*

16. *Id.* at art. 1, 6, 7, 14.

17. *Id.*

18. See Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 38 ASIL STUD. TRANSNAT'L LEGAL POL'Y 3–6 (2008).

19. See Ajamu Baraka et al., Discussion at The Brookings Institution: Fires, Floods, Earthquakes and Tsunamis: A Human Rights Perspective for Major Natural Disasters (Jan. 14, 2008) (transcript available at [http://www.brookings.edu/~media/events/2008/1/14-disasters/20080114\\_disasters.pdf](http://www.brookings.edu/~media/events/2008/1/14-disasters/20080114_disasters.pdf)); see also Chris Kromm & Sue Sturgis, *Hurricane Katrina and the Guiding Principles on Internal Displacement: A Global Human Rights Perspective on a Natural Disaster*, XXXVI INST. FOR S. STUD. (Jan. 2008). The

While the Guiding Principles had not been considered in the context of natural disasters, the international human rights dimensions of national security had been in the news in a different context when Katrina struck. Media exposés of prisoner abuse at the Abu Ghraib prison in Iraq and its legitimation by legal officials had been widely reported, and in September, U.S. Army Private Lynndie England was convicted of torture.<sup>20</sup> The language of human rights had become more available in the United States.

The Guiding Principles imagine a liberal legal subject: individuals choose, and they autonomously consider what is best for them. As Sally Engle Merry has argued with regard to the legal subject of international law, the state is to set the conditions for life and individuals are to assert rights.<sup>21</sup> For the legal subject embedded in the Guiding Principles, the choices people make represent what they want to do independent of the law. Choices act on preferences formed before legal guidelines come into play. Creation of a choosing subject threads its way through the Guiding Principles to the bureaucratic checklists and the production of paper and electronic forms that zoomed through the Internet in organizing assistance. While the subject of the Guiding Principles is a subject of concern and care who must be protected from violence, the subject must also be able to choose where to live and whether to return. The subject should also have access to judicial review. By the time international concerns make it to domestic bureaucratic forms, the person who is assisted must also make plans to leave assistance. Individual plans and plans for family—more than the responsibility of states to protect—characterize the assistance.

Next, global governance and domestic policy shape domestic legal subjectivity for those who are living away from their home country in a way that illuminates the problems of documentation for those who have been internally displaced. When there is a disaster in a home country, undocumented people in the United States may gain legal recognition via the category “temporary protected status,” extended by the

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hurricane happened in August 2005, and international law as relevant to the United States had most recently been in the news regarding the wars in Iraq and Afghanistan. In late 2003 through early 2004, extensive coverage of the abuses at Abu Ghraib prison generated public discussion of the Geneva Convention. See, e.g., JINEE LOKANEETA, *Being Helplessly Civilized Leaves Us at the Mercy of the Beast: Post-9/11 Discourses on Torture in the United States*, in TRANSNATIONAL TORTURE: LAW, VIOLENCE, AND STATE POWER IN THE UNITED STATES AND INDIA (2011).

20. See generally JANE MAYER, *THE DARK SIDE: THE INSIDE STORY OF HOW THE WAR ON TERROR TURNED INTO A WAR ON AMERICAN IDEALS* (2008).

21. See MERRY, *supra* note 9, at 5.

government wholly as a matter of discretion.<sup>22</sup> Change of status has practical implications. When undocumented people physically reside in the United States, they gain temporary protected status after a disaster in their home country, and documenting one's presence becomes important. When one is undocumented with no hope of legal status, one is physically present and legally absent. Keeping one's self legally invisible while also accumulating the papers needed to work is a trick that makes the law untrustworthy and confusing.<sup>23</sup> Once the government makes temporary protected legal status possible, documenting one's physical presence in the United States becomes important; before one could claim a legal status, hiding one's physical presence was important. That confusing problem of documenting legal presence when it suddenly becomes valuable has been well articulated in sociolegal studies of immigration, most notably by Susan Coutin.<sup>24</sup> It is relevant every time the national state offers legal status, including after a home-country disaster. Rapid reversal in the need to document also illuminates the legal status of some of the poorest of internally displaced people after Katrina, who went from living in family homes to which they could not document a claim, to having to document residence in areas affected by the hurricanes in order to claim assistance.

Finally, disasters attract international donations and NGOs that work with refugees. After Katrina, international donations paid for casework, established through a nonprofit comprising organizations that ordinarily provided assistance to refugees resettling in the United States.<sup>25</sup> When it had funds to distribute, the U.S. government had to rely on organizations already in place. Caseworkers assigned to help people access assistance and resettle were employees of nonprofits that worked with volunteers to resettle refugees. Posters in offices were of people from distant lands, not from the Gulf Coast or the cities in which people found themselves after fleeing the hurricane. Therefore, narratives of legal obligations to refugees structured aid even where no one mentioned international law.

When disaster displaces people, they are dispossessed; this dispossession is a global phenomenon. The extent of the dispossession varies from losing belongings accumulated over a lifetime and friends and family who live in streets one knows well, to losing a temporary

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22. See generally Alka Sapat & Ann-Margaret Esnard, *Transboundary Impacts of the 2010 Haiti Earthquake Disaster: Focus on Legal Dilemmas in South Florida*, 3 ONATI SOCIO-LEGAL SERIES 254, 262–63 (2013).

23. See, e.g., SUSAN COUTIN, *LEGALIZING MOVES* 68–69 (2000).

24. See, e.g., Susan Coutin, *Comment: The Violence of Being Not Quite There*, 7 L., CULTURE & HUMAN. 457 (2011).

25. See STERETT, *supra* note 1.



place to stay in which one recently landed. Although dispossession can open up the possibility of collective action,<sup>26</sup> the individualized bureaucratic processes by which people claim assistance, sometimes far from the place that justifies their claims and far from the people they know, makes it impossible to imagine making collective claims.

## II. PAPERWORK AND PRODUCING LEGAL SUBJECTS

In the United States, governing and law happen in the forms that people fill out with street-level officials, or front-line state workers.<sup>27</sup> This Article examines the subjectivities state forms imply. Legal settlements, political negotiations, and statutes inform the narratives structured by forms.<sup>28</sup> The Article uses as a case study the process of claiming housing assistance by displaced people after Hurricane Katrina. The process of claiming assistance enacted a familiar U.S. bureaucratic process of claiming, though it was put in place especially for Katrina. The subjectivities produced by the officials' paperwork were ones of practical, material resources that were or were not available, bracketing off the personal losses people may have felt.

For example, a nonprofit asked applicants for housing assistance to think about what was available in New Orleans if they were planning to return.<sup>29</sup> It warned everyone that utilities were not available, health care was limited, and costs had risen. Nonprofits used a checklist from an NGO in New Orleans that focused people on material resources that were unavailable. It asked about whether people had seen the home they wanted to return to, and whether they understood the extent of the damage. A form from FEMA required for applying for individual housing assistance, the "Request for Continued Direct Rental Payment Checklist," asked people to state their plan to obtain affordable housing.<sup>30</sup> Caseworkers got their understanding of how to fill out that section from FEMA officials, and caseworkers in turn explained to displaced people how to write a narrative about home: applicants had to explain that they had a plan to do something ("hire a contractor, find a new place to live") that they had not yet done. If they wanted to receive

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26. See JUDITH BUTLER & ATHENA ATHANASIOU, *DISPOSSESSION: THE PERFORMATIVE IN THE POLITICAL* 2 (2013) ("[D]ispossession implies imposed injuries, . . . that call to be addressed and redressed.").

27. See MICHAEL LIPSKY, *STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES* (1980).

28. Cf. Barbara J. Nelson, *The Origins of the Two-Channel Welfare State: Workmen's Compensation and Mothers' Aid*, in *WOMEN, THE STATE, AND WELFARE* 123, 142–45 (Linda Gordon, ed., 1990) (discussing the Mothers' Aid application and case investigation forms).

29. Samples of these collected forms are on file with the author.

30. Form on file with the author.

assistance, they could not say that they had done everything they could, nor that they had settled where they were. Planning to do something to make it possible to return to New Orleans meant that one had not fully settled where one was staying, so rental assistance could still be available.

The form from the nonprofit and the form from FEMA each asked people to consider information about the practicalities of where they wanted to live. From the nonprofit's point of view, people needed to know the material limits to housing and infrastructure in the Gulf Coast. From FEMA's point of view, people needed to plan to take action to resettle. They also needed to make a plan regarding employment, parenting, and income, assessing where they were and where they needed to be, and what barriers they found.<sup>31</sup> If people had their information structured for them, they could plan and make the right choice.<sup>32</sup>

Planning and information provisions are also central to governing the liberal legal subject. To inform or to structure choices is to do so for a reason: that without the structure, the choice would be wrong. Patrick Roberts has argued that after the Fukushima disaster, agencies competed to demonstrate their competency by getting out information about the expected international diffusion of radiation.<sup>33</sup> Agencies with very little authority to command demonstrate their competence by sharing information. Organizations, countries, scholars, and citizens could decide what to do with that information. Kim Fortun has argued that a central strategy for environmental governance in recent years has been increasingly sophisticated sharing of information via websites.<sup>34</sup> She argues that official knowledge of the damage caused by

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31. See, e.g., Self Sufficiency Plan: Assessment (form on file with author).

32. Informing choice is part of another regulatory strategy that is a matter of concern in this collection: nudging, or setting up choices so that the default is one that policymakers have determined is best for people. See, e.g., RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2008). One justification is precisely that choosing is cognitively overwhelming and the poorest citizens, who are less capable of choice, often have the most to choose. See generally CASS R. SUNSTEIN, *CHOOSING NOT TO CHOOSE: UNDERSTANDING THE VALUE OF CHOICE* (2015).

33. See Patrick S. Roberts, *Legitimacy in Global Disaster Response: Comparing CTBTO and IAEA Responses to Fukushima* (2015) (unpublished manuscript) (on file with author) (showcasing the ability of a relatively new, smaller international organization to demonstrate how original routines can solve a novel problem).

34. See Kim Fortun, *Environmental Right-to-Know and the Transmutations of Law, in CATASTROPHE: LAW, POLITICS, AND THE HUMANITARIAN IMPULSE* 146, 152–54 (Austin Sarat & Javier Lezaun eds., 2009).

the BP oil spill in 2010,<sup>35</sup> for example, or the 2014 explosion in a Texas fertilizer factory,<sup>36</sup> is of doubtful quality and controlled by the companies responsible for the disaster. The overlay of maps and publication of toxicity information by advocacy groups has the potential of making knowledge more plural. It has no authority to command and requires that people decide what to do.<sup>37</sup>

Informing choice has also been a regulatory response after the financial crisis in the United States. The new Consumer Financial Protection Bureau takes a consumer information approach to banking regulation. Consumers are informed about fraud, and the regulatory project is to simplify that information so that consumers can actually use it. Websites demonstrate their beautiful, useable interactive graphics that provide neighborhood-level information about toxic hazards, schools, real estate, fraud schemes, and radiation threats. In contrast, forms used to apply for assistance were simple, even if figuring out a housing plan or stating family goals were not.

Liberal legal subjects are informed, thoughtful, not caught in habits that are difficult to change, and able to make rational decisions. Rationality drops out the very emotional calculations that are crucial to decisions. As Tal Kastner argues, synthesizing psychological and behavioral economic research, people seldom are the subjects law imagines them to be: we all become cognitively overwhelmed, and we have emotional attachments bureaucratic rationality does not account for. However, we will produce the stories that the law requires of us to gain its benefits, and legal guides such as caseworkers can tell us what the right stories are. Bureaucracies do not recognize loss and longing well.<sup>38</sup> In this context, bureaucratic rationality meant bracketing off loss of the places, friends, families, and beliefs that one had before the storm. People may well want things not encompassed by the forms designed to guide their decisions.

The paperwork for accessing assistance and guiding decision-making is the “actant” that contributed to a particular subjectivity: the choosing neoliberal legal subject in disaster.<sup>39</sup> In Bruno Latour and

35. WILLIAM R. FREUDENBURG AND R. GRAMLING, *BLOWOUT IN THE GULF: THE BP OIL SPILL DISASTER AND THE FUTURE OF ENERGY IN AMERICA* (2012).

36. See, e.g., Manny Fernandez, *Lax Oversight Cited as Factor in Deadly Blast at Texas Plant*, New York Times (April 22, 2014), [http://www.nytimes.com/2014/04/23/us/lack-of-oversight-and-regulations-blamed-in-texas-chemical-explosion.html?\\_r=0](http://www.nytimes.com/2014/04/23/us/lack-of-oversight-and-regulations-blamed-in-texas-chemical-explosion.html?_r=0).

37. See Self-Sufficiency Plan, *supra* note 31, at 163–65.

38. Queer theory articulates a politics of loss, as Chantal Nadeau's contribution to this collection demonstrates. See Chantal Nadeau, *Courage, Post-Immunity Politics, and the Regulation of the Queer Subject*, 23 IND. J. GLOBAL LEGAL STUD. 505–529 (2016).

39. BRUNO LATOUR, *REASSEMBLING THE SOCIAL: AN INTRODUCTION TO ACTOR-NETWORK THEORY* 54–55 (2005).

Peter Weibel's book *Making Things Public: Atmosphere of Democracy*, Philippe Geslin and Ellen Hertz similarly find paperwork to be a force that organizes claims. They ask how indigenous people are produced in international law. They answer:

[P]aper, or more precisely, documents . . . . Without armies of soulless bureaucrats shuffling dossiers, no collective soul to move history forward; without the *letter* of the law of international human rights, no *spirit* against which to measure it. International norms come to life within institutions, and these institutions are peopled with human beings. But human beings alone . . . go nowhere without documents.<sup>40</sup>

In the case of disaster assistance after Katrina, those documents allow us to focus on a bureaucratic process within humanitarian assistance in disaster. Susan Silbey and Ayn Cavicchi argue that material objects are partially constituted by legal rules that then become invisible in the final object.<sup>41</sup> They point out all the legal rules made manifest in automobiles: the seat belts, the air bags, the mirrors that fold in, the gas mileage.<sup>42</sup> Seat belts and air bags protect people by making some unsafe choices—not wearing a seat belt—harder to make. They form a particular kind of subject. In contrast, forms after the Katrina disaster manifested a legal subject who had to choose and may have longed for home.

Documents are “constituents of social relations”; they “preserve a definite form of words detached from their local historicity.”<sup>43</sup> The documents that governments produce recognize new statuses; through them one can come to be recognized as a person with disabilities, as a citizen, or as a legal resident.<sup>44</sup> Claiming a status can be empowering but also debilitating if one is asking the state to recognize victimization and loss. In a late bureaucratic state, documents from administrative agencies constitute our legal encounters. Documents construct our

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40. Philippe Geslin & Ellen Hertz, *Public International Indigenes*, in *MAKING THINGS PUBLIC: ATMOSPHERES OF DEMOCRACY* 566, 571 (Bruno Latour & Peter Weibel eds., 2005).

41. Susan Silbey & Ayn Cavicchi, *The Common Place of Law: Transforming Matters of Concern into the Objects of Everyday Life*, in *MAKING THINGS PUBLIC: ATMOSPHERES OF DEMOCRACY*, *supra* note 40, at 556.

42. *See id.* at 558–59.

43. DOROTHY E. SMITH, *TEXTS, FACTS, AND FEMININITY: EXPLORING THE RELATIONS OF RULING* 210 (1990).

44. *See generally* PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* (1998); Barbara Yngvesson & Susan Bibler Coutin, *Backed by Papers: Undoing Persons, Histories, and Return*, 33 *AM. ETHNOLOGIST* 177 (2006).

experience of the state.<sup>45</sup> The files and the people managing them, sometimes including NGOs, make up the state.<sup>46</sup> Legal categories produce narratives and imply emotional states. Categories and forms bracket off particular stories as legally irrelevant to the bureaucratic rationality state agencies aim to produce. Documents bring the aura of bureaucratic rationality and practicality to joy in family formation: for example, the birth certificates and marriage certificates that confirm family status in adoption<sup>47</sup> and marriages.<sup>48</sup> Those documents also exclude some emotions or particular histories as irrelevant to law.<sup>49</sup>

For example, the documents that recognized displacement were not tied to the meaning of place. Assistance after Hurricanes Katrina and Rita were for particular disasters. The national commentary on what people had lost focused on the distinctive history of the Gulf Coast, including people's ties through jobs, family, and history to a place.<sup>50</sup> In interviews, people would tell stories of family, music, fishing, and restaurant work; or of mental health, violence, and crime. In contrast, displacement documents asked about the generalizable infrastructure of anyplace: schools, hospitals, housing, electricity, and water.

I now examine the structure of emotional states and what counts as rational decision-making through legal documentation of claims for housing assistance after disaster. I focus on two emotional states: fear and anxiety, and the desire to return. The register of fear or anxiety after disaster may be reminiscent of the fear and anxiety produced in policing, but in the context of humanitarian assistance rather than punishment. Even so, the surveillance required to recertify the need for

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45. As do the narratives of front line officials, including teachers, police, and employees of agencies like the Department of Motor Vehicles. See MICHAEL LIPSKY, *STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES* (1980) (discussing how individuals experience bureaucracy, the policy behind the human interactions, and methods of interacting).

46. Annelise Riles, *Introduction: In Response, in* DOCUMENTS: ARTIFACTS OF MODERN KNOWLEDGE 1, 5 (Annelise Riles ed., 2006) (citing David Dery, "Papereality" and Learning in Bureaucratic Organizations, 29 ADMIN. & SOC'Y 677 (1998)).

47. See Susan M. Sterett, *Parents and Paperwork: Same-Sex Parents, Birth Certificates, and Emergent Legality, in* QUEER MOBILIZATIONS: LGBT ACTIVISTS CONFRONT THE LAW 103 (Scott Barclay et al. eds., 2009).

48. See, e.g., JONATHAN GOLDBERG-HILLER, *The Status of Status, in* THE LIMITS TO UNION: SAME-SEX MARRIAGE AND THE POLITICS OF CIVIL RIGHTS 77 (2002). See generally KATHLEEN E. HULL, *SAME-SEX MARRIAGE: THE CULTURAL POLITICS OF LOVE AND LAW* (2006) (profiling the insights and experiences of same-sex couples that look to the law to legitimate their relationship amidst the shifting legal, political, and cultural climate).

49. See generally Hilary L. Berk, *The Legalization of Emotion: Managing Risk by Managing Feelings in Contracts for Surrogate Labor*, 49 LAW & SOC'Y REV. 143 (2015).

50. See, e.g., *Hurricane on the Bayou* (Audubon Nature Institute 2007); Henry Jenkins, *People from that Part of the World*, 21 CURRENT ANTHROPOLOGY 17 (2006).

assistance could produce fear and anxiety. The other expectation both produced and excluded in the form asking to document the need for assistance was that people would want to return. The process of assistance itself could shape the decision to return for people who accessed housing assistance, and forms from both FEMA and the charitable organizations that provided casework provide insight into how that process could have worked.

Documentation makes stories of dispossession legible to bureaucracy. In so doing, papers create the status they document. The forms that people use simplify our relationships—for example, leaving the joy in family formation for some other place. The air of neutral legal-bureaucratic recognition in forms also can structure the legal person. For example, the struggle for recognition of same-sex family relationships in the United States has included struggles to get recognized as a parent on a birth certificate.<sup>51</sup>

Part III outlines the ways we have recognized the mobilization of emotion in law. Analysis of mobilizing emotion in law has productively illuminated fear and crime; we can turn to other stories of law as a way of understanding how the administrative state works. In turn, that framework will be useful in organizing the expected responses to displacement in American culture: the hope of moving for opportunity and, alternatively, homesickness.

### III. EMOTIONAL STATES AND NARRATIVES IN LAW

In the United States, the war on terror and the public policy of crime control have brought to life how law governs through emotions. Communities are frightened of authorities, and the fear and anxiety that governing through suspicion and terror evokes are itself part of state control. Fear of authorities disrupts families, as people stay away from kin who could be in trouble with the law, or those in trouble stay away from family members whom they do not want to be threatened. Fear also governs communities under threat: in the United States, local news magnifies fear of street crime and alerts mobilize fear of terrorist attacks. Using the law to mobilize and manage fear is a strategy of governing that has come under increasing focus in both crime and occupation.<sup>52</sup>

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51. See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (holding that the right to marry is fundamental and inherent to the liberty of the person and, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, couples of the same-sex may not be deprived of that right and liberty). See also Sterett, *supra* note 47.

52. See Silvia Pasquetti, *Legal Emotions: An Ethnography of Distrust and Fear in the Arab Districts of an Israeli City*, 47 LAW & SOC'Y REV. 461, 461–65 (2013).

Governing through fear, and then assuring people that governments can manage the threat that gives rise to the fear, was also at the heart of documenting plans during the Cold War.<sup>53</sup> Government reports that laid out plans for managing catastrophes unlike anything anyone had ever seen were "fantasy documents."<sup>54</sup> They treated plans for dealing with the unimaginable, including nuclear catastrophe, as rational and reasonable.<sup>55</sup> The fear and terror were never named; those who wrote the documents laying out the plans framed the plans as pragmatic.<sup>56</sup> These analyses of fear point to other areas in which governing officials manage emotion, areas less commonly recognized. The maw of war and crime loom so large that they threaten to encompass every other realm of legal mobilization, documentation, and emotion. Analyses of displacement depended on tropes that organize American culture concerning home: the expectation that people were homesick, or longed to go home and therefore constituted a diaspora that had lost a self-contained community, as against the expectation that people are mobile and always ready to move.

Because stories are told for a particular purpose, stories from the disaster that imply compensation are intertwined with what legal categories will recognize as loss. Law mobilizes stories that it will recognize. For example, in the United States, the most legendary book on legal harm, disaster, and trauma focused on the Buffalo Creek disaster, a flood that destroyed an entire community in 1972 when a pond holding the waste from coal mining failed and the water ripped down the valley.<sup>57</sup> A law firm lavished effort on the case, including hiring sociologist Kai Erikson, an expert on catastrophe, to produce an account of what the loss of community meant to the people in Buffalo Creek. He did so by reading thousands of pages of depositions by people who had lost their homes.<sup>58</sup> The loss of community was central to the claim that the plaintiffs made. Depositions were produced to document the legal claim for emotional loss beyond the material loss of houses, schools, medical care, stores, and roads, a claim for losses much larger than the loss of poor people's buildings. The stories of the losses were produced for the lawyers and legal claims. The stories produced to make legal claims for compensation then justified the claims by commentators

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53. See, e.g., LEE CLARKE, *MISSION IMPROBABLE: USING FANTASY DOCUMENTS TO TAME DISASTER* 82-90 (1999).

54. *Id.*

55. *Id.*

56. *Id.*

57. GERALD M. STERN, *THE BUFFALO CREEK DISASTER: THE STORY OF THE SURVIVORS' UNPRECEDENTED LAWSUIT* (1976) (retelling how the survivors sued the coal mining company for corporate irresponsibility).

58. See generally *id.*

and policymakers that people had lost their *communities*, not just their homes.<sup>59</sup> We see the claim that a loss of community is the deepest loss when we call people who have fled a “diaspora.” That claim cannot be extricated from the law that produced compensation for loss of a home.<sup>60</sup>

Part IV turns to displacement after Katrina. It describes who counted as displaced, the broader context of homelessness in which the disaster happened, and then individual narratives of displacement.

#### IV. HOMELESSNESS, DISPLACEMENT, AND DISASTER

##### A. *Counting Displaced People*

Public commentary often ties disaster to a place; we see the devastation of Katrina to New Orleans, even ten years later. The pop star Beyoncé’s 2016 video “Formation” recalls Katrina in New Orleans; she sits on a police car that slowly sinks into floodwater in New Orleans.<sup>61</sup> However, many people fled the Gulf Coast and stayed far away, even away from the states that hosted most of the evacuees: Louisiana, Texas, and Georgia. If we center our concern on the people rather than the place, we will be looking to people who are not within the areas most often depicted. It is difficult to know how many people were far away; FEMA counts households, not people, since FEMA distributes assistance by household. John Logan, a demographer, used multiple sources of data to estimate how many people were away after Katrina, and how far away, by relying on postal change of address filings and population estimates from a survey done in December 2005. Logan argues that people who had lived in New Orleans and had not returned were more likely to be poor and black. By December 2005, 46 percent of those over eighteen who had fled were in states other than Louisiana, while 11 percent of white people who were over eighteen and had fled were in states other than Louisiana.<sup>62</sup> As of March 2006, six months after Katrina, 57,200 households had addresses away from Louisiana, Texas, and Atlanta, Georgia, according to applications to

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59. See KAI T. ERIKSON, *EVERYTHING IN ITS PATH: DESTRUCTION OF COMMUNITY IN THE BUFFALO CREEK FLOOD* 194 (1976).

60. See Willis Hon, *5th Circuit Reverses Itself on Hurricane Katrina Liability Lawsuit*, COLUM. J. ENVTL. L. 14, 18 (2013).

61. For a discussion and critique, see Shantrelle Lewis, “Formation” Exploits New Orleans’ Trauma, [http://www.slate.com/articles/double\\_x/doublex/2016/02/beyonc\\_s\\_formation\\_exploits\\_new\\_orleans\\_trauma.html](http://www.slate.com/articles/double_x/doublex/2016/02/beyonc_s_formation_exploits_new_orleans_trauma.html).

62. JOHN R. LOGAN, *POPULATION DISPLACEMENT AND POST-KATRINA POLITICS: THE NEW ORLEANS MAYORAL RACE*, 2006, at 8 (rev. ed.. 2006), available at <http://www.s4.brown.edu/katrina/report2.pdf>.



FEMA for individual assistance due to Hurricanes Katrina and Rita.<sup>63</sup> The poorest areas had flooded badly. Of the African American people who were displaced, 61.7 percent had incomes under \$20,000.<sup>64</sup> Homeowners could not get their homes repaired; schooling, medical care, and utilities were not in place; renters faced higher rents; and public housing was not reopening. More of the poorest people left and stayed away. Arguments about the obligation to rebuild New Orleans recur, but neighborhoods with little housing and infrastructure have not brought people back.

### *B. Housing Assistance*

The cash housing assistance for people displaced after Katrina worked as follows.<sup>65</sup> First, people received emergency assistance. Sometimes the federal government paid for people to be housed in hotels, other times in apartments or houses. FEMA then transitioned people who had not been able to find and pay for permanent housing to individual assistance. Emergency assistance ended in early 2006 for most people, and they transitioned to individual assistance that the Stafford Act at the time capped at \$26,200.<sup>66</sup> That had to cover the replacement of everything one had lost that was not covered by insurance, as well as rent.

Those on individual assistance had to recertify their need for rent assistance every three months and provide rent receipts, though FEMA could choose to ask for recertification more frequently. In order to get assistance, an applicant's home had to be unavailable, and they had to be unable to make stable, permanent arrangements wherever they were staying. People had to explain their long-term plans. Those plans could be to find work and get settled where they were, or to return to New Orleans once they could find housing there.

Assistance after Katrina was part of the policies governing homelessness that had become visible in the United States from the 1990s onward. Assistance after Katrina included payment to hotels or private landlords for rent. Local governments wanted to extend the assistance, as it kept people housed who might otherwise lack shelter and join the homeless people already managed within cities. Housing

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63. *Id.*

64. *Id.* at 9.

65. For a more detailed overview, see Susan M. Sterett, *Disaster, Displacement, and Casework: Uncertainty and Assistance After Hurricane Katrina*, 37 *LAW & POL'Y* 61, 71–76 (2015).

66. See *Dollar Limits of Disaster Assistance?*, FEMAINFO, available at [http://www.femainfo.us/Disaster\\_Assistance\\_Overview\\_Step\\_3.shtml](http://www.femainfo.us/Disaster_Assistance_Overview_Step_3.shtml).

groups allied with local governments (who could see themselves becoming responsible for many more homeless people once the federal government stopped paying assistance), filed lawsuits, and otherwise made claims for extended assistance, and the National Low Income Housing Coalition, not primarily a disaster-relief organization, participated in pressing for new programs.

To isolate disaster assistance as a particular program mistakes it as the only assistance people need when it is one element within the ad hoc social welfare state that operates in a context of growing inequality, insufficient access to housing,<sup>67</sup> and suspicion of those in need. If we take citizens rather than FEMA as the center of concern, we can see that assistance takes multiple forms: people can find the generally available disability assistance they had before the disaster, or the available housing via Section 8 assistance,<sup>68</sup> or donated furniture, or help from family members to be central. Local government officials saw that people displaced after the disaster would become their responsibility once federal assistance ended, though they would have no new resources to help. Conversely, advocates for homeless people could see the new postdisaster benefits as an opportunity. We have long known that disaster politics and policy are not contained by the event.<sup>69</sup> Their context is one of other policies and politics, already organized groups, and frameworks of rights and responsibilities that extend to the disaster.<sup>70</sup> The disaster leaks through the event. For example, after Katrina, housing assistance included renting houses that the mortgage corporation Fannie Mae held from the foreclosures that had been spreading through the country, charging only a minimal price.

Political bargains about accountability for government payments shaped the continuing need for recertification. If FEMA paid for housing for people who had not needed it, or for people who were homeless for other reasons, and later investigation documented the misallocation of funds, FEMA would continue to look bad for wasting money. They could try to collect the money, but they probably would not succeed. The

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67. See, e.g., MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016).

68. See *id.* (explaining housing assistance).

69. See generally Uriel Rosenthal, *Future Disasters, Future Definitions*, in *WHAT IS A DISASTER? PERSPECTIVES ON THE QUESTION* 146 (E. L. Quarantelli ed., 1998) (focusing on the interplay between empirical developments and the conceptualization of disasters in discussing the "disaster after the disaster").

70. See DAUBER, *supra* note 1, at 1–16 (detailing the legal and political frameworks of the welfare state during the New Deal and disaster relief post-Katrina); see also KIM FORTUN, *ADVOCACY AFTER BHOPAL: ENVIRONMENTALISM, DISASTER, NEW GLOBAL ORDERS* (2001) (discussing how disasters such as Bhopal are thrust into systems already created, which then must attempt to work through the disaster).

solution was to recertify people every three months rather than expect to collect money that had been wrongly claimed. That made claiming the money repeatedly uncertain. In learning how to fill out the forms, people had to remain unsettled; the emotions that were central to the experience of being displaced were bracketed out of the forms and left to mental health workers, yet embedded in the requirement that one remain unsettled to get assistance.

*C. Talking to Displaced People: Homeownership and Dispossession*

The rest of this Article draws on interviews with thirteen people who fled family homes after the 2005 hurricanes. Interviews with people who had family-owned homes in New Orleans draw from a broader project, which included interviews with ninety people displaced to Colorado, far from New Orleans, after Hurricanes Katrina and Rita. We also relied on interviews and attendance at meetings that brought together volunteers, paid emergency managers, caseworkers, and representatives from charitable organizations. Some people had arrived via government planes, unaware where they were flying until they figured it out from the long flight-time, or because the pilot announced it shortly before landing. Others came on their own, whether because they had family, friends, or experience living there, or because they had heard it was less overwhelmed than Houston and could provide good support. The modal age range was from fifty to fifty-nine, with people as old as seventy being displaced to Denver.

Since the focus of the Article is on home and mobility, it draws from interviews with people who fled family homes because they had the clearest reason to be tied to the Gulf Coast. Family homes were those that had long been held in the family, so they did not have a mortgage. Ten homeowners were African American and most had been living in homes that had long been in their families. Two had mortgages. For some, relatives shared ownership, with shares ambiguous. The line between home ownership and homelessness could be fine. For example, we included a man who lived with his mother; in turn, his mother had inherited the home from her mother. We chose to have an inclusive definition of ownership. Among the homeowners we had talked to, only three had arrived by government plane. The rest had come to Denver some other way, sometimes because family had helped. Eleven of the thirteen had lived in New Orleans most of their lives, though some of them had also lived elsewhere, including in Denver. Seven of the thirteen had friends or family in Colorado. Two of those who came by government plane did not have friends or family nearby. The government transported them without planning and with no help that

would make moving easier. Homeowners were between thirty-six and sixty-eight years old, with a mean of fifty and a standard deviation of nine and three quarters. One African American woman from New Orleans had spent many years away, including in the city to which she fled. She and one white man had mortgages.

People had access to housing assistance from FEMA. Their legal engagements were through bureaucratic forms. Legal engagements were multilevel, though the levels were not visible to each citizen applying for help. Individuals encountered FEMA officials, caseworkers, and questions about documentation and forms. At another level, the federal courts were also deciding cases challenging how FEMA administered housing assistance for displaced people.<sup>71</sup>

Mobilizing the law within bureaucratic agencies requires simplifying a messy knot of problems into categories legible to bureaucratic agencies and what they can provide. For example, one interviewee, James, had lived with his mother in her home. He had long struggled with substance abuse, and he had stopped living with his girlfriend because they were never able to help each other in recovery. After the hurricane, he talked about missing his girlfriend. His mother lived somewhere else, and their home had been destroyed. He wanted to be with his girlfriend, who was in New Orleans. He could not figure out what he could do about his girlfriend and his mother, and he wanted to be with them. That problem was at the top of his mind, and the ties between people help everyone recover from disaster, and asking people to rely on friends on family fits well with the disaster recovery community's belief that government can only help at the margins. Yet James's problems did not fit well with what assistance could support. Volunteer organizations did not want to encourage to return those who missed family, as James did, but who could not have the housing, electricity, plumbing, health care, and schools that would have made it possible to go back to New Orleans.

Caseworkers in cities to which people were displaced learned from those in New Orleans that moving back was not a good idea. Caseworkers discussed their worry that people were thinking about the family and friends they missed, and that they did not have a realistic assessment of conditions in New Orleans. No one knew what information people had from the news or from friends and family. Therefore, nonprofits circulated a form that caseworkers in other cities used. It asked people to decide about returning based on particular plans about, for example, the health care that was available, the

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71. See, e.g., *Ridgely v. FEMA*, 512 F.3d 727 (5th Cir. 2008); *Watson v. FEMA*, 2006 U.S. App. LEXIS 29382 (5th Cir. 2006); *McWaters v. FEMA*, 237 F.R.D. 155 (E.D. La. 2006).

schools, and the childcare. Each question had a checkbox. The document allowed the caseworkers not to treat their worries about people's decisions as something personal. The form could absorb anxiety or disagreement, or the personal stories that animated people. The form also treated needs as universal rather than particular.<sup>72</sup> The checklist people worked on with a caseworker reminded them to think realistically about return, and realism bracketed off the people one might miss.

The form is central to understanding the subjectivity performed around the legal housing-assistance practices. The form allowed caseworkers to treat people as planners and choosers, not as people the caseworkers were telling what to do. It asked people to get their own information about what was available and decide themselves whether moving to New Orleans was a sensible thing to do. What was sensible included not what people might have missed, whether a girlfriend, parent, or neighborhood. It was hospitals and schools, certainly necessary for living but not at all what people mean by home.

James's encounter with the law of displacement and assistance mischaracterized how James and others who fled after the storm understood what they needed and what they lost. First, law provided for those who were displaced. Having had a home that was no longer available was a requirement for getting help, and help was only temporary. FEMA provided housing assistance until one got resettled, or until one had reached the statutory cap on assistance. FEMA stopped assistance when someone was unable to prove that their home was uninhabitable or that they were spending their assistance money on rent. In other words, gaining assistance was uncertain. Loss was central to the legal subjectivity constructed and so was planning to get over loss. People were to be both tied to a place, one they would long for, and yet ready to move. Second, the loss recognized was temporary and material. Long-term needs and the need for family and friends were irrelevant to claiming housing assistance: James needed shelter after the storm.<sup>73</sup> The applications for individual assistance, for housing

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72. For the point that disaster reduces people to the event, erasing particular histories, see generally DIDIER FASSIN & RICHARD RECHTMAN, *THE EMPIRE OF TRAUMA: AN INQUIRY INTO THE CONDITION OF VICTIMHOOD* (Rachel Gomme trans., Princeton Univ. Press 2009) (2007).

73. The state also provided mental health assistance. See Andrew J. F. Morris, *Psychic Aftershocks: Crisis Counseling and Disaster Relief Policy*, 14 *HIST. PSYCHOL.* 264, 264–65 (2011). The assistance was temporary and had been provided on the enduring, yet unproven, assumption that disaster created mental health problems. *Id.* at 265. For many after Katrina, the assistance itself created some problems. Mental health providers struggled with the mental health needs created by both the uncertainty and the assistance itself, as well as those of individuals who had mental health problems prior to the

vouchers, for Fannie-Mae-financed houses, or public housing were applications for shelter. Rent would be paid, or a foreclosed home would be available for a low payment. The shelter would be where shelter was, not where families or friends were. Law recognized material needs, and the needs focused on individuals and institutions, not family or friends. When advocates talked about the relationships people needed, they referenced a broad and often difficult-to-describe community, not the particular relationships many people mentioned.

Part V examines homesickness and mobility as embedded in displacement assistance. I illustrate what is excluded by providing shelter for a limited time, which assumes the mobile/homesick dichotomy. Temporary assistance assumes that people miss the place they left and that missing a place is legally irrelevant. I explore the loss experienced by people we interviewed, a loss characterized by grief but neither the optimism of resettling for opportunity nor the expectation of return. I then argue that a policy based in displacement rather than security of housing provides little structure for making a new home.

## V. MOBILITY, HOMESICKNESS, AND DIASPORA AS AMERICAN FRAMEWORKS FOR MOVING

### A. *Mobility as Opportunity*

The hope after Hurricane Katrina, the event provoking the most recent mass displacement in the United States, was that moving because one was displaced would become moving for a job opportunity. Moving could allow a story of improvement in life after disaster, a hope that time did not bear out.<sup>74</sup> Disaster transforms places, and the new businesses that rush in in its wake illustrate the creative destruction that Joseph Schumpeter argued was central to capitalism.<sup>75</sup> As Naomi Klein has argued more recently, elites use disasters to transform places, organizations, and industries.<sup>76</sup> People are to take these transformations as opportunity, always ready to change their lives and

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hurricane. Katrina, in this sense, unveiled certain problems—making them more unmanageable—rather than created them, as the short-term postdisaster mental health assistance assumed. Cf. *id.* at 277–79.

74. See Jacob L. Vigdor, *The Katrina Effect: Was There a Bright Side to the Evacuation of Greater New Orleans?* 2 (Nat'l Bureau of Econ. Res. Working Paper Series, Working Paper No. 13022, 2007).

75. See THOMAS K. MCCRAW, *PROPHET OF INNOVATION: JOSEPH SCHUMPETER AND CREATIVE DESTRUCTION* 351–53 (2007) (discussing the idea of creative destruction).

76. NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* 8–9 (2007) (discussing the author's initial foray into the "intersection between superprofits and megadisasters").

adapt to new circumstances.<sup>77</sup> To expect people to find opportunity in moving puts the responsibility for adaptation on individuals who move, rather than on collective policy and the communities to which people move.

Mobility as opportunity does not work well for older homeowners: people who are over fifty, have a home, and have lived most of their lives in one place are least likely to move. Yet people who had family in the city to which they had fled, even people over fifty, said they did not plan to return to New Orleans. The prospect of another storm was frightening, the city would not be rebuilt, and they had family where they were. Hope that a new place would work out also probably looked like a more acceptable answer than despair.

People who had not moved from New Orleans before the storm and were over fifty were not likely candidates for moving and finding opportunity. Outside of disaster, people who move are different from those who stay; they are richer, with more years of formal schooling, and younger.<sup>78</sup> People who move often move for work. People who do not move stay because they have family ties.<sup>79</sup> Yet when people are displaced they move because their homes became uninhabitable, which fits into the categories neither of family nor of work. They may have wanted to move anyway, and they may have family in the places to which they move.

In analyses of American mobility outside of disaster, the people who are most likely to name homesickness are people cities are least likely to want to keep: older and poorer, less educated, possibly with disabled family members they need to care for—just the people who were least likely to return to New Orleans. Older people have a more difficult time finding work. Many of those from New Orleans received disability payments. People on disability payments have restrictions on how much they can work.<sup>80</sup> Older people and those with disabilities also will not fit well into the services that a new city offers for people on public assistance, such as work-readiness programs.<sup>81</sup> They are the people who

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77. See Pat O'Malley, *Uncertain Governance and Resilient Subjects in the Risk Society*, 3 ONATI SOCIO-LEGAL SERIES 180, 183–90 (2013).

78. See D'VERA COHN & RICH MORIN, PEW RESEARCH CTR., AMERICAN MOBILITY: WHO MOVES? WHO STAYS PUT? WHERE'S HOME? 5 (2008).

79. *Id.*

80. See JENNIFER L. ERKULWATER, DISABILITY RIGHTS AND THE AMERICAN SOCIAL SAFETY NET 34 (2006) (discussing the qualification for disability that predicates receipt of benefits on the inability to perform "substantial gainful activity").

81. See Liz Schott and Ladonna Pavetti, *Changes in TANF Work Requirements Could Make Them More Effective in Promoting Employment*, CENTER ON BUDGET AND POLICY PRIORITIES, (Feb. 26, 2013), <http://www.cbpp.org/research/family-income-support/changes-in-tanf-work-requirements-could-make-them-more-effective-in>.

most need to be welcomed if they have moved rather than been temporarily displaced, and who are least likely to have policies to welcome them in a new place or help to bring them back to an old place. Ideal workers—and the subjectivities disaster assistance presumes—are mobile and ready to work, with few encumbrances, whether of family, limited education, or trauma. Older displaced people who would find it hard to remake their lives and might have been unlikely to work are those most likely to feel homesick and least likely to have experience moving.

### *B. Homesickness and Homesick by Law*

Homesickness is produced by law for people like James, who was torn about returning for multiple reasons, including that there was no place to return to, but who must claim to be undecided if he was to continue to get certified for assistance. Homesickness is also produced at the analytical and advocacy level, where a measure of how well governments were performing post-Katrina was determined by how many people were returning to New Orleans, and how possible it was to return. Surveys done soon after Hurricane Katrina asked people about their intentions to return and reasons they would find returning difficult. Policies that paid housing assistance for those displaced offered little to help people resettle in a new place. Community organizations and churches held potlucks and parties, and the refugee resettlement agencies were to partner people with volunteers who could help. Relief programs and charitable assistance have been temporary when communities have been tied to place. Communities offer help to their own after displacement, or to those nearby, and they expect them to return.<sup>82</sup>

In sum, housing assistance was diverse and changeable, with HUD, Fannie Mae and FEMA all doing something and local governments making choices about priorities. As the Congressional Research Service summed it up in 2008, housing challenges included “the difficulty in communicating complicated housing policy decisions to a vast and dispersed population.”<sup>83</sup> The rental assistance required recertification every three months: people were to be making long-term plans but had not yet achieved them. What would those plans be? One could get a house from Fannie Mae for eighteen months for a nominal rent, if a

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82. See, e.g., NAT'L VOLUNTARY ORGS. ACTIVE IN DISASTER, LONG-TERM RECOVERY MANUAL 1 (2004); see also Thomas A. Krainz, *Fleeing the Big Burn: Refugees, Informal Assistance, and Welfare Practices in the Progressive Era*, 24 J. POL'Y HIST. 405 (2012).

83. Francis X. McCarthy, *FEMA Disaster Housing and Hurricane Katrina: Overview, Analysis, and Congressional Issues*, CONGRESSIONAL RESEARCH SERVICE (2008).



caseworker found one and a person was willing to move into that house regardless of whether friends, family, or easy transportation were nearby.<sup>84</sup> Housing advocates explained that people who were victims of disaster could jump to the top of the local waiting list for federal public-housing vouchers. However, while experiencing displacement after Katrina was tragic, it is not the only tragedy that has made people homeless, and it was not the only reason people were homeless across the United States early in 2006. From a city's point of view, and even from the point of view of people who need housing assistance because they had long been homeless, being far from where one had lived and teetering on homelessness because of a catastrophe should not necessarily be more urgent than teetering on homelessness because wages are low, one has substance-abuse problems, or one cannot live with family anymore. For example, cities and the media were concerned with policing homeless people who tried to claim benefits as displaced people. Addressing one kind of reason for housing problems above others both produces those housing problems as a reason for fleeing, and requires that one intend to go home.

Thinking through home and return in applications for assistance invites thinking about the narrative expectations embedded in assistance.<sup>85</sup> Geographers have been unpacking the multiple meanings of home and homelessness in law. Most commonly, in law, home has been conceptualized within the framework of criminal law and privacy.<sup>86</sup> To be without a home is to be subject to supervision in public that makes one without a place to be.<sup>87</sup> Expecting that people will always move for a job opportunity is in tension with an American longing for home.<sup>88</sup> The longing for home evokes places as "deeply rooted, fixed places with clear boundaries and stable associated

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84. *Id.*

85. See generally Patricia Ewick & Susan S. Silbey, *Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative*, 29 LAW & SOC'Y REV. 197 (1995) (discussing the use of narrative to tell subversive and hegemonic stories that connect lives and organization in society).

86. See generally DAVID DELANEY, *THE SPATIAL, THE LEGAL, AND THE PRAGMATICS OF WORLD-MAKING: NOMOSPHERIC INVESTIGATIONS* (2010).

87. See KATHERINE BECKETT & STEVE HERBERT, *BANISHED: THE NEW SOCIAL CONTROL IN URBAN AMERICA* 37–61 (2010) (detailing the broadly applicable, durable social control tool of banishment and its transformation of urban social control in Seattle); LEONARD C. FELDMAN, *CITIZENS WITHOUT SHELTER: HOMELESSNESS, DEMOCRACY, AND POLITICAL EXCLUSION* 93–95 (2004).

88. See generally SUSAN J. MATT, *HOMESICKNESS: AN AMERICAN HISTORY* (2011) (detailing how opportunity has encouraged throughout history people to leave home and, at the same time, created homesickness and a desire for the familiarity of home).

identities.”<sup>89</sup> Evoking home as a distinctive place means remembering what one can do there that is more difficult elsewhere. People told us about fishing, or playing music in bars on Saturday night and in churches on Sunday morning, something difficult to replicate in a place that is not home. Places with clear boundaries and identities do not call to mind people who are in transit, who have lived elsewhere, or who have family elsewhere. The loss of home is a greater loss than the loss of housing. People who are fixed in a place with clear boundaries are out of place elsewhere. The boundaries of the disaster are boundaries in space and time and contributed to making New Orleans a distinctive legal space for which one legally longed<sup>90</sup> because that was a way to claim assistance when the prospects for housing were otherwise grim for many. Producing homesickness evokes an image of identities as closely tied to bounded, identifiable spaces. That image can exclude recognizing the families and experiences people have outside of the place identified as home.

Homesickness is the often-untold story of the costs of moving for opportunity. Naming an emotion also makes it into one thing rather than another—homesickness over a loss of home rather than anger or grief, for example—as one tries to articulate need, disruption, and loss.<sup>91</sup> Home contains multiple meanings, and that multiplicity makes it all the more powerful: it can be a feeling, and the people one feels at home with, it can be housing one has lost, and it can be a distinctive place. It is “a place where one lives and a feeling of comfort—of feeling at home.”<sup>92</sup> It can also be a place of loss, isolation, and oppression; home is not a comfort for all.<sup>93</sup> After Katrina, treating people as displaced from a home that they had lost emphasized the comfort, not the isolation or oppression. The policy paying people for being away from home would tilt the story toward comfort, while the obligation to be mobile would tilt the story of home to a place that is gone, with infrastructure that needed to be replicated elsewhere, with any emotional losses bracketed

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89. Tim Cresswell, *Place*, in 8 INTERNATIONAL ENCYCLOPEDIA OF HUMAN GEOGRAPHY 169, 175 (2009), available at <http://booksite.elsevier.com/brochures/hugy/SampleContent/Place.pdf>; see also TIM CRESSWELL, *PLACE* (2004); James S. Duncan & David Lambert, *Landscapes of Home*, in A COMPANION TO CULTURAL GEOGRAPHY 382 (James S. Duncan et al. eds., 2004). On the specific case of postdisaster New Orleans, see generally Margaret E. Farrar, *Home/Sick: Memory, Place, and Loss in New Orleans*, 12 THEORY & EVENT (2009).

90. See generally Sarah Blandy & David Sibley, *Law, Boundaries and the Production of Space*, 19 SOC. & LEGAL STUD. 275 (2010) (discussing the meaning of boundaries in social, legal, cultural, economic, physical, and political settings).

91. See Duncan & Lambert, *supra* note 89; Deborah B. Gould, *Life During Wartime: Emotions and the Development of Act Up*, 7 MOBILIZATION: AN INT'L J. 177, 180–89 (2002).

92. Duncan & Lambert, *supra* note 89, at 382.

93. See CRESSWELL, *supra* note 89, at 25.

off. Narrating home narrates an origin story that includes place, family, and friends who are together for a reason, not because chance threw them together. Homesickness is a wish for a stable and known place, particularly acute after sharp breaks. What has long been the mobility of many Americans over time has made it a characteristically American emotion.

Where there are sharp breaks in lives, law promises to stabilize identities by "backing them with papers," making a narrative of belonging in a place that originates with policies rather than in nature, however much the policy might claim nature predates it.<sup>94</sup> Policies can keep people between places, or not ever at home.<sup>95</sup> No legal ritual or paper certification brings people into new identities after sharp breaks. Indeed, after Katrina, the people who had fled had to be recognized as equal citizens across the country, at the same time that the United States heard repeated commentary about the distinctive character of New Orleans and the people within it, whether the people and the place were read as sinful or charmed.<sup>96</sup>

Yet law fed on homesickness. Treating longing for home as both a legal qualification for assistance and an emotion raises troubling questions about equality of citizenship. In diasporas people live transnationally; if housing assistance after disaster is offered because people are out of place, they belong in one place rather than another. Paying for assistance when people have lost a home because of disaster continues the patchwork effort in public policy to limit assistance to the truly deserving, an effort that invites fraud by picking out one reason rather than another as making someone legitimately needy. Equal citizenship answered the argument that people from New Orleans had distinctive problems and history. However, if the people and the place distinguished themselves because of deep roots and a rich culture rather than pathology, displacement could entail homesickness rather than disparagement. After Katrina, the force of homesickness became a mode of analysis to critique the long-term response of the multiple levels of government. People who had fled were a diaspora.<sup>97</sup> Those with severe storm damage to their homes have been less likely to move back, and

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94. See, e.g., EWICK & SIBLEY, *supra* note 44, at 165–220; Yngvesson & Coutin, *supra* note 44.

95. See, e.g., Coutin, *supra* note 24.

96. Henry Jenkins, "People from that Part of the World": *The Politics of Dislocation*, 21 *CULTURAL ANTHROPOLOGY* 469, 469–73 (2006) (discussing the reference to New Orleans residents as people from "that part of the world").

97. See generally *DISPLACED: LIFE IN THE KATRINA DIASPORA* (Lynn Weber & Lori Peek eds., 2012).

those with family in New Orleans are more likely to move back.<sup>98</sup> Evaluating who returns takes return to New Orleans as a measure of the well-being of people who were displaced. Diaspora has implied shared national origins of people who are away from their homeland and have crossed national borders.<sup>99</sup> In contrast, the policy conclusion that people must move from the coasts does not take people to be tied to a place. If people comprise a diaspora, the policy solution is to bring people home. If people are to be mobile individuals, ready to work, then they will settle in their new place. An alternative is grieving for the impossibility of return, taking into account the strengths people can bring, and recognizing a need for policies that help people resettle.

Neither the positive nor negative meaning of New Orleans as a distinctive place, nor the responsibility of individuals to move for opportunity, imagines politics of inclusion in new communities. The rental payments that FEMA made kept people in temporary housing, for some until March 2009, and the payments themselves helped to make one a displaced person rather than someone who resettled.<sup>100</sup> Without systematic policies of inclusion, family allowed people to stay where they had fled. Those who had every reason to find it hardest to move—because they were older, or because they had lived a long time in New Orleans—found themselves caught between the two poles of American mobility. Mobility had to be an opportunity or one had to long to go home. That split did not accommodate grief. People could miss what was gone and never expect it back. The housing assistance not only kept people in-between by being temporary yet extended by months. It provided shelter, and the need for shelter dominated all other needs, however much mental health professionals and trained laypeople tried to provide help.

The production of subjects as either longing for return or willingly mobile are two poles that may capture dominant American understandings of moving, but they do not capture all that people displaced after disaster feel. Displaced people themselves articulated hope for resettling in a new place, made more plausible by the presence of family, friends, and previous experience with their new city. They expected to stay where they had fled and, at the same time, found themselves longing for a home that was not there. The hope for resettlement not only tracked the American story of mobility and individual resilience; displaced people also critiqued what New Orleans had been in their own neighborhoods. Their governments left the most

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98. Elizabeth Fussell et al., *Race, Socioeconomic Status, and Return Migration to New Orleans After Hurricane Katrina*, 31 *POPULATION & ENV'T* 20, 23–25 (2010).

99. ROBIN COHEN, *GLOBAL DIASPORAS: AN INTRODUCTION* 4 (2008).

100. See McCarthy, *supra* note 83.

vulnerable on rooftops during a flood. Long-term neglect long before the flood made neighborhoods difficult for some to miss, and still home for others. No public policy provided a framework for reconciling these emotionally complex narratives, whether by improving the places people were or by making inclusion a local priority.

The production of subjects as belonging in places from which they are displaced will continue to be important given the expectation of increasing numbers of extreme weather events and sea-level rise. The National Climate Assessment for 2013 argues that the current strategy has been one of “(un)managed retreat,”<sup>101</sup> which implies continuing to have to treat the need for housing as a way to manage complex employment and housing problems after disaster, and informing people of the material reasons they should not go home, but, to keep receiving assistance, they should not resettle.

Distinguishing need after disaster from the broader policies of homelessness was evident in payment of assistance and in naming people who had fled the Gulf Coast a “diaspora.” A diaspora identifies with a homeland, and that homeland creates ties across space. Those ties may not have been so evident before the event. What that pairing excludes is grief at what was lost, support for resettling, and support for recognizing home and need as something other than shelter, and the housing assistance as intertwined with the emotional needs. The policy of placing shelter above all else replicates a focus in U.S. law on the material benefits of rights.<sup>102</sup>

### *C. What Diaspora, Shelter, and Mobility Miss: Loss and the Need to Resettle*

Although some people missed home desperately, they were also cautious about whether they could ever return. In the first interview, only two said they wanted to return, though almost all wished they could. They knew the city was devastated, and that their hometown would not be rebuilt in the same way. The storm had been traumatic, and moving back to where one had seen trees snapped, dead bodies, and alligators swimming by would only bring that trauma back. Few trusted that the levees would hold in another storm. Poor people, including those who had long held family homes, faced a disproportionate risk of harm from hurricanes, given where people were in the city and the engineering of levees and canals.<sup>103</sup> For those who had lost family in

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101. Moser et al., *supra* note 6, at 591.

102. See GOLDBERG-HILLER, *supra* note 48, at 58–59.

103. See WILLIAM R. FREUDENBERG ET AL., CATASTROPHE IN THE MAKING: THE ENGINEERING OF KATRINA AND THE DISASTERS OF TOMORROW 19 (2009).

other storms, the history of Katrina stretched back into past losses, compounding reasons not to stay. Neither staying away nor moving to New Orleans could make a home when New Orleans would never be what it had been.

Asking people if they planned to move back or wanted to return brought a new identity for people who had lived their entire lives in New Orleans. Still, those who lived in family homes and had not left New Orleans before had not thought of themselves as people who chose where to live. They lived where they had a home. As a sixty-two-year-old African American woman said in reflecting on why she could not return to where she had lived for so long:

I'm not goin' back to New Orleans. I will never go back. It will never be the same any more. I've lost—through the two hurricanes, I've lost half a generation. Twenty-two people, from 1932, I think it was, added all together, twenty-two relatives. I wouldn't want to go back there. It's a lot of heartache.

Her memory of loss stretched across generations. When she explained that she had lost relatives in about 1932, she might have been referring either to the Great Mississippi flood in 1927, when many died and many more were displaced,<sup>104</sup> or a lesser yet still devastating flood in 1937. She missed something, or she would not have mentioned that it would never be the same any more. Still, she remembered all the relatives who had died, something no rebuilding could fix. Why, with family who could help in a new state, would she want to return? She still recognized that moving to Colorado did not allow a fresh start, or new opportunities for her. It would, she believed, for younger people. Any choice of where to live evoked loss, whether Denver or New Orleans. In Denver she had housing assistance. If the only place she could rebuild was New Orleans once temporary housing assistance stopped, perhaps she would move there, but that too would be a loss.

Most people described missing home, and home was where family and one's house were. However, some had connections to Denver when they moved there; they had lived there before, or had family and friends in town. Eight of the thirteen people had family in Colorado, including some with children in school. Children had a hard time settling; if they got grounded in school there would be even more reason to stay.<sup>105</sup>

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104. See generally JOHN M. BARRY, *RIISING TIDE: THE GREAT MISSISSIPPI FLOOD OF 1927 AND HOW IT CHANGED AMERICA* (1997).

105. See LORI PEEK & ALICE FOTHERGILL, *RECONSTRUCTING CHILDHOOD: AN EXPLORATORY STUDY OF CHILDREN IN HURRICANE KATRINA 9–10* (2006); Jennifer A. Reich

For many, it was hard to imagine rebuilding a life without enough money, without friends, and without a home. The evacuation was traumatic, and the state of Colorado treated people better than New Orleans after the storm. (Good treatment in Colorado was ascribed to the character of the people, generous beyond their means, rather than to the federal money that allowed relief or to the comparatively small number of evacuees taken in by Colorado.) If family in New Orleans pulled one back, family members who got settled in a new place or were afraid to return could help a person resolve to stay away. As a forty-two-year-old African American woman who had evacuated with family explained,

My family has decided not to go back. They're afraid of the levees. The city doesn't know what they're gonna do. They're movin' on, even though they don't want to. They can't endure this much longer. My grandmother's not going back. She's eighty-three years old. She says, "I can't evacuate again."

She had come to the city she was in because she had lived there before, and she would stay away from New Orleans because her family was afraid and her grandmother too old to move. Even so, six months later she reflected how hard it was to resettle and what she missed about New Orleans:

Mainly, just the connection I have with my family and my childhood neighborhood. And you know the familiarity of my city. I still feel like I don't know . . . [this city] has changed so much since I lived here, and I get frustrated not knowing where I'm going.

What she longed for had disappeared, so returning was not something she considered. It was still hard to resettle. In a later interview, she reflected about her daughter's wish to return:

She said that she didn't want to go back in the state that it's in now, because it's not...she doesn't know if she can deal with looking at that every day. So on one hand she's homesick, and the other hand it's like she already knows

what it's going to be like. She hasn't seen it, and I don't think she would enjoy being there...not being able to do things like a normal person.

Staying in place was hard, even having known the new city before. Return was impossible. Wanting to return could mean wanting to return to a place that no longer existed.

For many, the loss was much more devastating than only longing for home. Home was not there anymore. Expecting people to rebuild their lives without familiar surroundings, friends, or family asks too much of people whose children are grown and who did not move for opportunity. Even those few who found work and expected to stay could find the loss overwhelming. As a fifty-four-year-old African American man explained to us,

Right now I would say I'm financially able to rebuild again, but it's not the money thing, it's the, I just miss what I had, I just miss everything around, money can't buy everything. Because every time I go somewhere, go places, I look around the city and I realize it's not New Orleans. I realize that I'm far away from home, you know, even when I'm walking, I'm looking around saying boy, boy, boy, where am I. It's a challenge trying to convert your life from what it was to trying to start a new one. 'Cause if you're starting a new one, you don't have the same support group. You don't have the same friends, your family's not close, the environment is different, you know, you got to get used to new food, all this other stuff like I told you all about.

He concluded by turning the problem back on us:

[S]ay you ladies go home this evening or go back to [your city and university] or something and you find the whole town wiped out. You know, you find, you know houses destroyed. Your friends' houses gone. Your family, where they at? You know just think of all that.

He was settled and could not imagine moving back. He had seen devastation and did not believe his home or his friends would ever come back. The disaster assistance made it possible to live in a new place. However, he needed something other than money. Friends, family, and familiar surroundings made a home. The law could not produce home, of



course, and perhaps no one expects that it can. When assistance requires stating what one plans to do and making a choice, though, it can contribute to producing an expectation that one can choose to be at home when need far exceeds what the housing assistance can assuage.

#### CONCLUSION: MISSING LOSS IN THE CLAIM TO HOME

One response to displacement is to draw people together at home, and nonprofit groups tried to do that by inviting people to report where they were so others could find them and they could be brought back home.<sup>106</sup> Years after the storm, nonprofits rebuilt houses in New Orleans, particularly for homeowners who had not had insurance.<sup>107</sup> A grant program provided assistance to homeowners as late as 2013. Without infrastructure, however, people have not returned even to houses built by charities.<sup>108</sup>

Alternatively, the response can be to draw people together and work toward integration where they are. To state the task for displacement as welcoming newcomers instead assumes that people move and do not still aim to move back. The United States does not have policies to help people resettle together, or to help communities assist new, traumatized residents. People are themselves responsible for knowing where they have friends and family, and evacuation advice includes telling people to have plans to contact friends and family. Evacuation plans do not include getting people to where they want to go, nor did the plans post-Katrina include working with where people had friends or family to call on. The extensive (and variable) disaster assistance that goes to individuals is not organized to bring people together. Federal money paid state and county governments to offer mental health assistance in cities with evacuees immediately after Katrina, and the organizations put together support groups. However, there are no guidelines for welcoming people when by law they were out of place rather than resettled. Under the forms they filed and according to the international guidelines that no one on the ground referenced, people were to choose where to live, but the resources required to choose were outside what law could provide. The lack of housing for low-income renters in both

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106. Chris Kromm and Sue Sturgis, *Hurricane Katrina and the Guiding Principles on Internal Displacement: A Global Human Rights Perspective on a National Disaster*, INSTITUTE FOR SOUTHERN STUDIES 26 (January 2008).

107. See generally MAKE IT RIGHT, <http://www.makeitright.org>; LOWER 9TH WARD HOMEOWNERSHIP ASSOCIATION, <http://www.lower9thwardhomeowners.org>.

108. See Lydia DePillis, *If You Rebuild It, They Might Not Come*, NEW REPUBLIC (March 13, 2013), <https://newrepublic.com/article/112620/brad-pitts-make-it-right-houses-drag-new-orleans>.

New Orleans and the places to which people fled made choosing for those who had the greatest need very difficult. Voluntary associations can help people to resettle as a community, relying on the skills they have and what they know. Voluntary-agency liaisons and FEMA employees helped to convene community groups. Churches held parties and community meetings to inform people about how to apply for assistance.<sup>109</sup> However, it was hard to gather people together where people had no transportation or obvious place to meet, and there was no simple way to gather names and get the word out. Despite tremendous good will, it can be hard to bring people together when there is no previous plan for how to do it or an easy place to gather.

After all, displacement can be one more part of the United States' history of mobility. Americans moved out onto the plains, displacing Native Americans. The Trail of Tears forced the Cherokee out of their homes in Georgia to Oklahoma. Southern African Americans fled for the North in the Great Migration after the First World War and into the Second, fleeing lynching, cruel mismanagement of disaster after the Great Mississippi Flood of 1927, and segregation, responding to job opportunities in the North. Americans fled the devastation of the Dust Bowl in the 1930s, leaving Oklahoma, Texas, and parts of Colorado to try to make a life elsewhere.

In public rhetoric, we still treat disaster as a legitimate reason, for a little while, to be poor, out of place, and needing help. Disasters draw our attention, horror, and sympathy both for those who get paid or who get compensation for helping, and for those who suffered through the disaster.<sup>110</sup> However, when the disaster upends fragile stability, as it did for James, people need assistance for much longer than the news cycle. As attention fades, people have the same assistance available that is available to everyone else. The same set of explanations for why people are poor or how assistance works that applies to everyone who have not suffered in a disaster will apply to those who did.

Few policies are in place to welcome newcomers in the United States. That would require planning; once people have fled, communities of displaced people can be difficult to find and difficult to bring together. After Katrina, people could choose where to live, and

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109. *C.f.* Susan M. Sterett & Jennifer A. Reich, *Prayer and Social Welfare in the Wake of Katrina: Race and Volunteerism in Disaster Response*, in *RACING THE STORM: RACIAL IMPLICATIONS AND LESSONS LEARNED FROM HURRICANE KATRINA* 135 (Hillary Potter ed., 2007).

110. *See* STERETT, *supra* note 1. *See generally* DAUBER, *supra* note 1; KEVIN ROZARIO, *THE CULTURE OF CALAMITY: DISASTER AND THE MAKING OF MODERN AMERICA* (2007); THOMAS A. BIRKLAND, *AFTER DISASTER: AGENDA SETTING, PUBLIC POLICY, AND FOCUSING EVENTS* (1997).

they received rent payments.<sup>111</sup> The dispersal that direct housing payments to landlords allows, and that allows people to move where they can find housing, militates against building community among those displaced.

If those who fled Hurricane Katrina comprise a diaspora, homesickness fixes Katrina in a place, in New Orleans, rather than in the people who spread across the country. Law helps organize the emotion and the narrative one would name after displacement, particularly given the law that placed people in between.<sup>112</sup> After Katrina and after other storms, the federal government has paid for housing for people who were displaced from their home. Clients had to be away from home to gain first emergency assistance and then individual assistance: anyone who had moved to a new place, in the sense of being permanently settled, was not entitled to assistance. Anyone who returned home lost rental assistance. FEMA does not pay for people to move, nor does it pay for people to be at home. It pays for displacement. The stories people had to tell to continue to get assistance were stories of being away from home temporarily, and planning either to return or to find long-term housing where they were. When the program ended for the last of those assisted after Katrina and Rita in March 2009, most were no longer gaining rental assistance, but the poorest may not have left because they had resettled. They had run out of benefits, or did not satisfy documentation requirements. The assistance was confusing to track; as caseworkers and volunteers explained to people how they could qualify for individual assistance, they needed to be making long-term plans while living in short-term plans that could not transfer well to the long term.<sup>113</sup> Legal recognition required fixing New Orleans as a previous home they had not intended to leave when the storm hit.<sup>114</sup>

The marginal assistance available to return people to the mobile subjects they are supposed to be may fit well with a late welfare state that requires market solutions, individual investment in one's human capital, and nonprofit voluntarism to assist people for a short time. It

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111. See Sheila Crowley, *Where is Home? Housing for Low-Income People After the 2005 Hurricanes*, in *THERE IS NO SUCH THING AS A NATURAL DISASTER: RACE, CLASS, AND HURRICANE KATRINA* 121 (Chester Hartman & Gregory D. Squires eds., 2006); see also Susan M. Sterett, *New Orleans Everywhere: Bureaucratic Accountability and Housing Policy After Katrina*, in *CATASTROPHE: LAW, POLITICS AND THE HUMANITARIAN IMPULSE* 83, *supra* note 23 (describing housing assistance for displaced persons after Katrina).

112. See Pasquetti, *supra* note 52.

113. See Sterett, *supra* note 13.

114. For a discussion on law as fixing a reality it claims only to recognize, see generally Barbara Yngvesson & Susan Coutin, *Schrödinger's Cat and the Ethnography of Law*, 31 *POLAR: POL. & LEGAL ANTHROPOL. REV.* 61 (2008).

can only make sense in the context of the broader policies of homelessness. Nonprofits experienced in disaster relief, as well as public agencies that provide assistance, hold that people are to be returned to the state they were in before the disaster. If they were homeless before the disaster, they are to be homeless after it. If the available resources did not work for people before the disaster, they probably will not afterwards. Requiring that, to deserve help, people have to come from a distinctive place in which they had been rooted, and to which they would like to return, invites fraudulent claims from people who need help for other reasons. Those homeless for other reasons and living alongside displaced people have no reason to understand why they are excluded from help when they need it, might have also moved for multiple reasons, and suffered something other than storms. Displacement picks out belonging to a place as a distinctive reason people need public assistance, which cannot acknowledge the helpful family and friends who live elsewhere, and one that is puzzling to all the others who also need help for other reasons. Communities, not just coastal communities and not just individuals, need practices that incorporate traumatized newcomers.